

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8469 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

Hon'ble MR.JUSTICE A.M.KAPADIA Sd/-

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? Yes
2. To be referred to the Reporter or not? Yes :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? : NO
No

UNION OF INDIA

Versus

RT ADHVARYU

Appearance:

MR JC SHETH for Petitioners

MR KK SHAH for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.M.KAPADIA

Date of decision: 02/09/1999

ORAL JUDGEMENT

(Per: B.C.Patel, J.)

Union of India (Railways) and its officers have preferred this Special Civil Application against the order passed by the Central Administrative Tribunal, Ahmedabad Bench in Original Application No.21 of 1992 on 19.12.1997. The question raised before this Court is

that the Tribunal had no jurisdiction to exercise the powers under the provisions contained in the Administrative Tribunals Act, 1985 (hereinafter referred as the Act) on the ground of non-disposal of the appeal finally by the Appellate Authority within a period of six months from the date of preferring an appeal, even if the Tribunal is approached within a period of one year from the expiry of the said period of six months? On the other hand, Mr. Shah, learned advocate for the respondent has submitted that the question raised by the railways is not tenable in view of the provisions contained in Sections 20 and 21 of the said Act.

2. It appears that, on 21.11.1990, the Divisional Commercial Superintendent passed an order, namely, removal of the applicant from service by way of penalty. It is not disputed that against the said order, the applicant before the Tribunal, preferred an appeal on 10.12.1990 to the competent authority. The Railway Service (Discipline and Appeal) Rules, 1965 - Part V provides for appeals. It is not disputed that an appeal was preferred under the provisions contained in Part V and particularly under Rule 80. With a view to see that there is quick disposal of appeals and also with a view to see that persons against whom orders are passed get justice within a reasonable period, the Railway Board on 14.2.1969 by a circular called upon the Appellate Authority hearing the appeals against the order of disciplinary authority to dispose of the appeals promptly and within a reasonable time. It was also indicated that, if appeal or application cannot be disposed of within a month of its submission, an acknowledgment or an interim reply should be sent to the individual within a month. This indicates that the Railway Board in 1969 directed the officers concerned to dispose of the appeals at the earliest. This is merely a letter addressed to the authorities hearing the appeals. It has no statutory force. However, it indicates the anxiety on the part of the administration to see that the appeals which are preferred are disposed of at the earliest. The question is whether the application preferred before the Tribunal can be said to be maintainable or not if in a case the applicant had already approached the Appellate Authority to redress the grievances. For that question one has to refer relevant parts of Sections 20 and 21 of the Act, which read as under:

"Sec.20 Application not to be admitted unless
other remedies exhausted - (1) A Tribunal shall
not ordinarily admit an application unless it is
satisfied that the applicant had availed of all

the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances -

(a) xxx xxx xxx

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired;

(3) xxx xxx xxx

Sec.21 Limitation - (1) A Tribunal shall not admit an application -

(a) xxx xxx xxx

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) xxx xxx xxx

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section(1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

3. Reading Section 20 it appears that the Tribunal should not, ordinarily, admit an application unless the applicant has availed of all the remedies available to him under the relevant service rules as to redressal of

grievances. Learned advocate Mr.Sheth appearing for the petitioners submitted that, as the applicant had already preferred an appeal, the Tribunal ought not to have exercised its jurisdiction till the appeal is disposed of. Reading clause (b) of sub-section (2) of Section 20, it is clear that, if the appellate authority has not disposed of the appeal within a period of six months from the date on which such appeal was preferred, then, the person shall be deemed to have availed of all the remedies available to him under the relevant service rules.

4. Section 21 provides for limitation. It mandates the Tribunal not to admit an application in case where an appeal such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months. Reading these provisions, it becomes clear that, if an appeal is preferred and if the same is not decided within a period of six months, then, after the expiry of the period of six months, if an application is preferred within one year from the date of expiry of the said period of six months, the Tribunal will have jurisdiction to entertain the application.

5. In the instant case, the appeal was preferred on 10.12.1990 and as it was not disposed of within a period of six months, the application was preferred before the Tribunal on 30.12.1991. In view of the provisions contained in Section 20 of the Act, it cannot be said that the Tribunal had no jurisdiction to entertain the application. If the application is preferred before the Tribunal within six months of preferring the appeal without being disposed of, the Tribunal would not get the jurisdiction. In a case where an appeal is preferred and a period of six months has expired thereafter without final order having been made, the period of limitation for preferring an application as prescribed in clause (b) of sub-section (1) of section 21 is one year from the date of expiry of the said period of six months. If within such period if the application is not preferred before the Tribunal against the order of Disciplinary Authority on the ground of non-disposal of the appeal within six months from the date of preferring an appeal, ordinarily on such a ground, right will be extinguished if the application is not preferred before the Tribunal within one year from the said period of six months.

6. It was suggested that the Tribunal instead of

disposing of the matter on merit ought to have directed the appellate authority before whom the appeal was preferred by the respondent herein to dispose of the appeal at the earliest. In view of the language of clause (b) of sub-section (1) of section 21 of the Act, it was submitted that an appeal cannot be preferred within a period of one year from the date of expiry of the said period of six months. In view of the language used in clauses (a) & (b) thereof, it was submitted that the Tribunal shall not admit an application within one year from the date of expiry of the said period of six months. It was submitted that this provision is incorporated only with a view to see that the Tribunal is not approached immediately. We are not in agreement with the submission made by the learned Counsel. Sub-section (3) of Section 21 specifically states that notwithstanding anything contained in sub-section (1) of section 21, an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period. Perusing sub-section (3) of Section 21 it is clear that, if one has preferred an application before the Tribunal beyond the period of one year from the date of expiry of six months from the date of preferring an appeal without being finally disposed of, then an application is required to be made before the Tribunal indicating sufficient cause for not preferring an application within a period of one year from the said period of six months. A joint reading of sub-sections (1) and (3) of section 21 leaves no doubt that a Tribunal shall not admit an application unless the application is made within one year from the date of expiry of the said period of six months and such an application can be admitted in view of sub-section (3) of section 21 even if it is submitted after one year, if sufficient cause is shown to the Tribunal for not making an application within such a period, namely, one year.

7. Thus, it cannot be said that the Tribunal will have no jurisdiction even in a case, where, the Appellate Authority competent to decide the appeal, fails to make a final order on the appeal within a period of six months from the date of preferring an appeal and the application is preferred before the Tribunal within a period of one year from the expiry of the said period of six months. Therefore, learned advocate Mr. Sheth's contention cannot be accepted, and the Tribunal had jurisdiction to entertain the application as if that was an application against the order passed by the authority removing the applicant. The Parliament has made provision

specifically and is to be exercised in case the appellate authority fails to decide the appeal within a period of six months, if the application is preferred within a period of one year from the date of expiry of that six months.

8. Petition stands dismissed. Notice is discharged with no order as to costs.

(KMG Thilake)

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